

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201701883	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 03/09/2017 7:43 PM	Location of Incident: Northeast corner of Farmers Boulevard and Turin Drive	Precinct: 113	18 Mo. SOL 9/9/2018	EO SOL 9/9/2018	
Date/Time CV Reported Fri, 03/10/2017 4:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 03/10/2017 4:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Nelson	15828	957895	113 PCT
2. POM William Schroder	26324	955463	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Nelson	Force: Police Officer Brian Nelson struck § 87(2)(b) with a vehicle.	
B.POM William Schroder	Force: Police Officer William Schroder used physical force against § 87(2)(b)	
C.POM Brian Nelson	Force: Police Officer Brian Nelson used physical force against § 87(2)(b)	

Case Summary

On March 10, 2017, § 87(2)(b) filed the following complaint via the CCRB online website (Board Review 01). On March 9, 2017, at approximately 7:43 p.m., § 87(2)(b) was riding his All-Terrain Vehicle (ATV) down Dunkirk Drive in Queens. PO Brian Nelson and PO William Schroder of the 113th Precinct attempted to stop § 87(2)(b) and allegedly struck § 87(2)(b)'s ATV with their RMP (**Allegation A**). § 87(2)(b) dismounted his ATV and fled on foot. PO Schroder caught up to § 87(2)(b) and forcibly brought him to the ground (**Allegation B**). PO Nelson then kicked § 87(2)(b)'s face (**Allegation C**). § 87(2)(b) was arrested for § 87(2)(b) among other charges (Board Review 02). Fieldwork was conducted to obtain video footage for this incident but yielded negative results (Board Review 19).

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- As of May 8, 2017, § 87(2)(b) had not filed a Notice of Claim with the City of New York with regard to this incident (Board Review 20).
- § 87(2)(b) § 87(2)(c)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 05).
- PO Nelson has been a member of the NYPD for two years. He has one past CCRB complaint involving one allegation of force (gun pointed). The complaint was withdrawn. PO Nelson has one other open CCRB complaint, case 201702584, in which two allegations are pleaded against him. § 87(2)(g)
- This is the first CCRB complaint filed against PO Schroder in his three-year tenure.

Allegations Not Pleased

- **Vehicle Stop** – PO Schroder and PO Nelson were interviewed at the CCRB and stated that they stopped § 87(2)(b) because he was driving an ATV down a one-way street in the wrong direction without a helmet, and because the ATV had no license plates, tail lights, or headlights (Board Review 06; 07). § 87(2)(b) confirmed that he was driving down the one-way street in the wrong direction and that his ATV had no license plates. He was arrested for § 87(2)(b) among other charges. § 87(2)(g)
- **Property Damage** – § 87(2)(b) stated he believed PO Nelson struck his ATV while he was riding it. § 87(2)(b) did not allege that the ATV was damaged as a result, and he denied observing any damage to the ATV when he later observed it. PO Nelson and PO Schroder denied striking or damaging § 87(2)(b)'s ATV at any point. § 87(2)(g)
- **Force** – PO Nelson and PO Schroder stated that PO Nelson punched § 87(2)(b). However, § 87(2)(b) did not allege that he was punched in any of his statements. § 87(2)(g)

Allegation A – Force: Police Officer Brian Nelson struck § 87(2)(b) with a vehicle.

In addition to his original complaint, § 87(2)(b) provided phone statements and an in-person sworn statement to the CCRB (Board Review 08; 09; 10). In his sworn statement, § 87(2)(b) stated that after noticing the RMP behind him, he continued to ride his ATV until a car obstructed his pathway, at which

point he got off and fled on foot. When the officers caught up to him, an officer, identified via the investigation as PO Nelson, stated to § 87(2)(b) “I think I totaled your quad man.” PO Nelson sounded “very cool” when he stated this, rather than spiteful. § 87(2)(b) did not think the officers had hit his ATV until PO Nelson stated this. In a follow-up phone statement, § 87(2)(b) stated he believed the officers hit his ATV while he was still on it, but he did not recall feeling any impact from being struck. He did not allege that the ATV was damaged as a result of the incident, and he denied observing any damage to the ATV when he later walked past it. § 87(2)(b) did not allege that officers struck his ATV in his original complaint or unsworn phone statement.

PO Nelson and PO Schroder both confirmed that PO Nelson was operating the RMP. The officers stated that almost immediately after § 87(2)(b) turned onto Farmers Blvd, again into oncoming traffic, § 87(2)(b) dismounted his ATV in front of a parked car. PO Nelson’s memo book stated, “RMP has damage unrelated. Unknown by who,” and he explained that upon turning onto Farmers Blvd, he sideswiped a parked vehicle, causing damage to the RMP (Board Review 17). Both officers denied striking or attempting to strike § 87(2)(b)’s ATV with their RMP at any point, and denied stating something to the effect of, “I think I totaled your quad.” They denied that the ATV was damaged as a result of the incident, and confirmed that a responding officer drove the ATV back to the stationhouse.

PO Nelson and PO Schroder prepared Threat, Resistance, and Injury (TRI) reports (Board Review 11; 12). In the “Actions taken by MOS” section, neither officer checked off boxes for “impact weapon” or “intentionally struck subject with vehicle.”

§ 87(2)(g)

Allegation B – Force: Police Officer William Schroder used physical force against § 87(2)(b)

§ 87(2)(b) stated that after fleeing on his ATV and then running from the officers for approximately one block, he stopped running on his own accord. He did not believe the officers issued him commands during the pursuit. PO Schroder caught up to him and brought him to the ground. § 87(2)(b) could not recall how PO Schroder brought him to the ground, but believed PO Schroder held § 87(2)(b)’s hands as he fell and “overpowered” him. He was not sure if he hit the ground hard or if he sustained any injuries from the fall.

PO Schroder and PO Nelson confirmed that PO Schroder exited the RMP and chased § 87(2)(b) on foot while PO Nelson parked the RMP, and that PO Nelson then joined the foot pursuit. PO Schroder stated that while chasing § 87(2)(b) he told § 87(2)(b) to stop at least three to five times. § 87(2)(b) continued to run but eventually began to slow down as if he was getting tired. PO Schroder caught up to him and grabbed him from behind. § 87(2)(b) tensed his body and began to turn around toward PO Schroder, and PO Schroder believed § 87(2)(b) may be turning around to fight him. PO Schroder, who is 5’11” tall and weighs 205 pounds, believed § 87(2)(b) who was of a larger stature, would be strong. Furthermore, he believed he was alone with § 87(2)(b) as he did not know how far away PO Nelson was. For these reasons, PO Nelson felt it best to take § 87(2)(b) to the ground, handcuff him, and end the situation as quickly as possible. He lifted § 87(2)(b) and swept his feet from underneath him while bringing him to the

ground. PO Schroder strained his abdomen and shoulder, and bruised his testicle as a result of lifting § 87(2)(b) and falling to the ground.

PO Nelson stated that he was approximately ten to fifteen feet behind PO Schroder during the foot pursuit. He stated that § 87(2)(b) never stopped running on his own volition. PO Schroder caught up to § 87(2)(b) first, at which point he grabbed him around his sides, lifted him, and tackled him to the ground.

The TRI report prepared by PO Schroder states that he used a forcible takedown and a leg sweep against § 87(2)(b) to overcome resistance or aggression, and because § 87(2)(b) was a “fleeing suspect.” § 87(2)(b)'s arrest report states that he is 6’2” tall and weighs 260 pounds (Board Review 02).

An officer may use the reasonable force necessary to take a lawfully arrested person into custody or to prevent one’s escape from custody. Some factors to consider in determining when to use force are whether the subject attempts to evade arrest by flight, or the size of the subject in comparison to the officer. NYPD Patrol Guide, Procedure 221-01 (Board Review 13).

§ 87(2)(g)

Allegation C – Force: Police Officer Brian Nelson used physical force against § 87(2)(b)

§ 87(2)(b) stated that he fled from the officers but that once PO Schroder caught up to him, he did not resist. He put his hands to his sides and waited for the officers to take his hands. § 87(2)(b) did not attempt to get PO Schroder off of him or attempt to push either officer away at any point. He could not recall if his face hit the ground or if he sustained any injuries as a result of the takedown. PO Schroder put § 87(2)(b)'s hands behind his back, and though PO Schroder did not immediately handcuff § 87(2)(b), § 87(2)(b) kept his hands together behind his back and did not resist or move his body. PO Nelson did not hold § 87(2)(b) on the ground. While PO Schroder held § 87(2)(b)'s hands behind his back, PO Nelson, who was standing next to § 87(2)(b), kicked one of § 87(2)(b)'s cheeks downward causing his other cheek to make contact with the ground. § 87(2)(b) turned his head, at which point PO Nelson kicked his other cheek. He believed that his other cheek also hit the ground as a result of the second kick. During his original complaint, phone statements, and sworn statement, § 87(2)(b) confirmed that his face was kicked twice.

§ 87(2)(b) could not recall if PO Nelson made any statements to him before kicking him. After PO Nelson kicked § 87(2)(b), PO Schroder told PO Nelson, “You don’t have to do that. He’s not resisting.” § 87(2)(b) was then handcuffed with ease. § 87(2)(b) sustained abrasions, which he stated looked similar to road rash. The abrasions were on both cheeks and were bleeding. His jaw hurt and felt tender. He believed these injuries were a result of the kicks causing his cheeks to hit the ground. EMS responded to the stationhouse and cleaned § 87(2)(b)'s abrasions, but § 87(2)(b) refused to go to the hospital.

On March 10, 2017, during § 87(2)(b)'s arraignment, Attorney § 87(2)(b) took photos of § 87(2)(b)'s cheeks (Board Review 14; 15). The photos show scabbing to both cheeks, near § 87(2)(b)'s beard. § 87(2)(b) took an additional photo of his left cheek upon his release (Board Review 16). The photo is blurry but appears to show redness and some scabbing to his left cheek. § 87(2)(b) did not seek medical attention upon his release.

Both PO Nelson and PO Schroder stated that they did not observe any injuries on § 87(2)(b) prior to or directly after the takedown. They stated that upon landing on the ground, § 87(2)(b) lay on his

stomach and held his hands underneath his body. PO Nelson arrived almost immediately after § 87(2)(b) landed on the ground, and he and PO Schroder issued § 87(2)(b) commands to give the officers his hands.

PO Nelson stated that in addition to holding his hands underneath his body, § 87(2)(b) tried to bend his legs as if to try to get up from the ground. He did not do anything else with his body and did not attempt to use force against the officers. PO Nelson and PO Schroder attempted to pull § 87(2)(b)'s arms out from underneath his body. PO Nelson put his knee on § 87(2)(b)'s shoulder to restrain him while grabbing his hands. When he was still unable to get ahold of § 87(2)(b)'s hands, he punched § 87(2)(b)'s cheek once. He could not recall which cheek he punched, or how long he had been struggling with § 87(2)(b) before punching him. He stated he punched § 87(2)(b)'s head because it was the closest part of § 87(2)(b)'s body to PO Nelson. PO Nelson denied punching § 87(2)(b) more than once, and denied kicking § 87(2)(b) at any point. Immediately after PO Nelson punched § 87(2)(b) gave the officers his hands. PO Nelson did not see § 87(2)(b)'s head or face make contact with the ground at any point. He did not notice any injuries on § 87(2)(b) immediately after he was handcuffed, but he later noticed swelling to one side of § 87(2)(b)'s face.

PO Nelson initially stated he did not hear § 87(2)(b) complain of any injury or pain at any point, and did not observe any bleeding on § 87(2)(b). He was later shown the TRI report he had prepared, which stated that § 87(2)(b) sustained minor lacerations/abrasions. PO Nelson then stated he observed a "tiny" cut on § 87(2)(b)'s face that was bleeding a little, but that the injury was only to one side of his face. The TRI report stated that in addition to a hand strike, PO Nelson used a "foot strike." PO Nelson stated that the "foot strike" was in reference to him putting his knee on § 87(2)(b)'s shoulder, and he maintained that he did not kick § 87(2)(b)'s arrest report, which was prepared by PO Nelson, stated that after running through a backyard, § 87(2)(b) turned towards officers and "began to grapple/push officer." PO Nelson explained that this was referring to § 87(2)(b) putting his arm over PO Schroder's arm during the takedown, and to him attempting to get up from the ground. After reviewing the arrest report, PO Nelson denied seeing § 87(2)(b) push an officer at any point. Photos of § 87(2)(b)'s injuries were presented to PO Nelson. He denied observing the injuries depicted in the photos during the incident.

PO Schroder stated that while on the ground, § 87(2)(b) did not do anything with his body other than hold his hands underneath him and tense his body. He did not attempt to use force against either officer. PO Schroder put his knee across § 87(2)(b)'s lower back and attempted to pull § 87(2)(b)'s hands from underneath him. PO Nelson responded almost immediately after PO Schroder began trying to grab § 87(2)(b)'s hands and within five to ten seconds, PO Nelson punched § 87(2)(b)'s right shoulder. PO Schroder was not sure if PO Nelson made physical contact with § 87(2)(b) in any way before punching him. PO Nelson, who was positioned toward § 87(2)(b)'s head, put his knee on § 87(2)(b)'s back and may also have kneed § 87(2)(b)'s shoulder, though PO Schroder was unsure. PO Schroder did not see PO Nelson punch § 87(2)(b)'s head or kick § 87(2)(b). He stated however, that he did not see everything that PO Nelson did, as he was more concerned with his own pain and with handcuffing § 87(2)(b). He did not notice if § 87(2)(b)'s head or face made contact with the ground at any point.

After striking § 87(2)(b) PO Nelson tried pulling § 87(2)(b)'s hands from underneath him, and the officers were able to gain control of § 87(2)(b)'s hands and handcuff him. PO Schroder denied observing injuries on § 87(2)(b) at any point, but stated that after handcuffing § 87(2)(b) he went to deal with his own injuries and he did not see § 87(2)(b) much. PO Schroder reviewed the TRI report he prepared, in which he noted that § 87(2)(b) "complained of substantial pain" and had "minor lacerations/abrasions." He did not independently recall § 87(2)(b) having any injuries or complaining of pain. PO Nelson's TRI report was also presented to PO Schroder. Regarding the "foot strike" noted on the report, PO Schroder reiterated that given that PO Nelson's knee was on § 87(2)(b)'s back, PO Nelson may have also kneed § 87(2)(b) though PO Schroder did not see PO Nelson do so. He added that officers consider using their knees to be a "foot strike," and he had once noted using a "foot strike" on a TRI report when he used his knee. Photos of § 87(2)(b)'s injuries were presented to PO Schroder. PO Schroder

confirmed that the injuries looked like road rash, but he did not recall observing the injuries and did not know how § 87(2)(b) sustained them. Although § 87(2)(b)'s arrest report noted that he pushed an officer, PO Schroder denied that § 87(2)(b) did so.

The TRI report prepared by PO Nelson states that he used a hand strike and a foot strike to “overcome resistance or aggression,” in defense of his self and other MOS, and because of a “fleeing suspect.” The report states that § 87(2)(b) sustained “minor lacerations/abrasions.” § 87(2)(b) was arrested for resisting arrest. The narrative on the arrest report does not describe any resistance § 87(2)(b) offered specifically while on the ground (Board Review 02). Neither PO Schroder nor PO Nelson’s memo books mention that § 87(2)(b) refused to be handcuffed or offered resistance while on the ground (Board Review 17; 18).

Officers may use the reasonable amount of force necessary to take a lawfully arrested person into custody. NYPD Patrol Guide, Procedure 221-01.

§ 87(2)(g)

§ 87(2)(g)

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Squad: ____

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____

Title/Signature

Print

Date